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EAST TIMOR
Xanana Gusmão - A Briefing

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In July 1997 President Nelson Mandela of South Africa called for the release of the leader of the independence movement in East Timor, Xanana Gusmão, following an unprecedented meeting between the two men granted by Indonesia's President Suharto. While on a visit to Indonesia President Mandela had requested to see Xanana Gusmão, who was permitted to leave prison especially for the meeting on 15 July at Jakarta's state guesthouse, adjacent to the Presidential palace.

In a letter to Indonesia's President Suharto requesting the meeting, President Mandela called for the release of Xanana Gusmão, saying this was essential to resolve conflict in East Timor: *"You will understand that we cannot normalize the situation in East Timor unless all the political leaders, including Mr Gusmão, are free."* On 7 August reports were received of a recent magazine interview in which Xanana Gusmão spoke of his own release as secondary to his long-term vision for East Timor. He stated, *"my release is actually an unimportant matter. More important is how efforts to settle the East Timor problem in a manner that is just, peaceful and beneficial to all, can be continued."*[1]

Indonesian forces invaded East Timor in December 1975. In July 1976 Indonesia declared East Timor its 27th province but its sovereignty has never been recognized by the United Nations. An independence struggle, including both violent and peaceful activities, continues.

Amnesty International welcomes the initiative by President Mandela and hopes that his call for the release of Xanana Gusmão will also focus light on the fate of dozens of other East Timorese political prisoners and prisoners of conscience. The organization has long called for the immediate and unconditional release of all East Timorese prisoners of conscience and for a review of all convictions against political prisoners.

This briefing provides background information on Xanana Gusmão's arrest, trial and imprisonment.

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[1]AFP, 7 August 1997

Background

José Alejandro Xanana Gusmão was born on 20 June 1946 in Laleia, Manatutuo, in northern East Timor. He married Maria Emilia Baptista in 1969 and they have two children.[2] In 1974 Xanana joined the *Frente revolucionaria de Timor Leste* (Fretilin), a political party which declared the independence of East Timor on 27 November 1975. After Indonesia's invasion of East Timor, Xanana became the leader of the resistance movement, which has continued to seek the independence of East Timor through armed struggle and peaceful political activity. In an recent interview with the non-governmental organizations Index on Censorship in London and the Institute for the Free Flow of Information in Jakarta, Xanana Gusmão expressed his views on the current problem facing East Timor: *"...Human rights violations continue to be a serious issue, because the most fundamental human rights violation is the violation of the right of our people to decide their own fate. The East Timorese people have never been given the freedom to say freely what they want for their own political future. Other problems are consequences of the illegal and criminal military occupation. The problem is not the lack of freedom, but the cause of the lack of freedom."*[3]

Arrest and Trial

Xanana Gusmão was captured by the Indonesian Armed Forces on 20 November 1992. He was sentenced to life imprisonment in May 1993 after being found guilty under Article 108 of the Indonesian Penal Code (rebellion), Law no. 12 of 1951 (illegal possession of firearms) and Article 106 (attempting to separate part of the territory of Indonesia). The sentence was commuted to 20 years by Indonesia's President Suharto in August 1993. Xanana Gusmão is serving his sentence in Jakarta's Cipinang Prison, some 2,000 kilometres from his homeland.

After his capture on 20 November 1992, Xanana Gusmão was held in secret military custody for 17 days before representatives of the International Committee of the Red Cross (ICRC) were permitted to see him. During this period he was believed to have been subjected to psychological ill-treatment in the form of sleep deprivation in an apparent attempt to prevent him from concentrating fully on his defence plea. Xanana Gusmão was also denied access to a lawyer while under interrogation and there were doubts about whether he was free to appoint a lawyer of his own choosing, as required by Indonesian law. Lawyers from the Indonesian Legal Aid Institute (LBH) were not permitted to visit him, despite having been given power of attorney by his relatives. A defence lawyer was finally appointed on 26 January 1993, just six days before the trial began.

The trial itself was marked by violations of international and domestic standards for fair trial. Prosecution witnesses, many of whom were themselves political detainees, appear to have been subjected to undue pressure from military authorities, making their testimony unreliable. One such witness was Saturnino da Costa Belo, who unexpectedly shouted "*Viva Timor Leste*" (long live East Timor) in the court. He was removed, placed in isolation and subsequently declared to be "mentally disturbed" and unfit to testify. He is now serving

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[2]After the Indonesian invasion of East Timor in 1975, the family had no contact with Xanana until they visited him in prison in 1994. They have been living in exile in Australia since 1990.

[3]Reproduced in *The Nation* newspaper, Bangkok, 11 April 1997.

a prison sentence of nine years. Fear of official reprisals also meant that many witnesses were too afraid to testify for the defence. A further problem was that neither Xanana Gusmão nor many of the witnesses were fluent in Indonesian, the language used in court, and the translation services were neither complete nor accurate.

Perhaps the most blatant contravention of fair trial standards came in one of the final sessions, when Xanana Gusmão was due to read his final defence plea. The statement addressed highly sensitive political issues, such as the question of Indonesia's sovereignty over East Timor. After he had read two pages of a 29-page statement, the presiding judge ordered him to stop, claiming that his remarks were "irrelevant".

The fact that Indonesia's sovereignty over East Timor has not been recognized by the United Nations has caused many observers to question the competence of Indonesian courts to try Xanana Gusmão and other East Timorese. It is questioned in particular whether an East Timorese can legitimately be charged with rebellion against a government whose occupation of a territory has not been recognized internationally. Furthermore, the general political atmosphere within which the trial took place - one of undisguised official hostility to the defendant - and the fact of repeated military and government interference with the judicial process, meant that a fair trial was virtually impossible.

Following his trial, Xanana Gusmão had problems securing access to human rights lawyers. In early January 1994, the Indonesian Government "temporarily" suspended ICRC and family visits to Xanana Gusmão, after it was discovered that he had written letters to the International Commission of Jurists and the Portuguese Government. In the letters he described the unfairness of his trial and asked to be retried in an international court. He also expressed his wish to consult LBH lawyers. Following strong protests from domestic human rights organizations the ban on visits by the ICRC and relatives was lifted the following month.

Despite lifting the ban on visitors, the authorities continued to prevent Xanana Gusmão from meeting LBH lawyers. When asked to explain why, Indonesia's Director General of Corrections reportedly said, "*What is Xanana's interest to meet lawyers of the LBH? If all people who want to [are allowed to] visit him, his cell will be full*".[4] In mid-February 1994, the Minister of Justice told the press that anyone, including lawyers, could visit Xanana, but that LBH lawyers would not be allowed to do so because the purpose of such a visit "*is not clear*". The Director General of Corrections stated that LBH lawyers only wanted to visit Xanana to ask about the legality of his trial - an issue which was no longer open to question. He said that a verdict had been passed and a request for clemency granted when the President commuted the sentence in August 1993.[5]

Xanana was eventually permitted to meet LBH lawyers in late March 1994. At the meeting he signed a letter authorizing LBH to act on his behalf and to seek a judicial review of his trial. He told the lawyers that his trial was unfair and that he had never requested clemency because he did not accept the jurisdiction of the courts in the first place. The request for a trial review was rejected by the Justice Minister, who said that the legal process

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[4]*Associated Press*, 20 February 1994.

[5]*Editor*, 17 February 1994.

against Xanana had been completed and that in granting a retrial the government would set a "bad precedent".[6] LBH representatives were able to meet Xanana again in July 1994, after two failed attempts, and they again pledged to support Xanana in his request for a judicial review of his trial. In response to questions from the press, the Justice Minister reiterated his earlier view, saying that it would be "strange and unethical" for the case to be reopened.[7] The Minister did say, however, that the decision on a retrial was the responsibility of the Supreme Court.[8] The issue has never been resolved and Xanana Gusmão has never been retried.

Treatment in Detention

Since his imprisonment in Cipinang, concerns have arisen about Xanana Gusmão's treatment while in detention. In April 1994, he wrote to Amnesty International and asked the organization to pressure the authorities for a transfer to another block of the prison. In the letter he complained of being "humiliated, vexed and threatened" from morning until night every day. He related that criminal prisoners in Cipinang were being encouraged by the authorities to insult and harass him constantly: *"If I avoid speaking it's because 'I'm frightened'; if I leave the cell and then return it's 'from fear'. If they speak to me and I respond it's because 'I'm frightened'; and then there's the distortions of my words and phrases, the manipulation of what I say to provoke and make fun of me, etc. They invent "stories" to tell the guards who laugh at my expense."*[9]

Xanana Gusmão suffered recurrent bouts of kidney problems early in his imprisonment which dated from the years before his arrest. In April 1995 he was in such pain that he was unable to either walk, sit or stand for long and a number of officials agreed that he should be hospitalized. However, the head of Cipinang prison refused amid a dispute over who would be responsible for payment of the medical fees. When permission was eventually granted in May 1995, he was admitted to the St Carolus Hospital in East Jakarta where a kidney stone was removed.

In August 1995 Xanana Gusmão was placed in an isolation cell and had a previously-granted three-month remission to his sentence cancelled after he attempted to send an unauthorized letter from prison. The letter was an appeal to the United Nations Fourth World Conference on Women in Beijing to protect the rights of East Timorese women which, he said, had been "systematically violated " for 20 years by Indonesia.

In August 1997 it was announced that the government had granted a three-month reduction to Xanana Gusmão's prison term as part of the annual review of sentences announced on 17 August, the anniversary of Indonesia's independence. Convicted after a

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[6] *Radio Australia*, 24 March 1994.

[7] *Reuter*, 26 July 1994.

[8] *Jakarta Post*, 26 July 1994.

[9] Letter from Xanana Gusmão to Amnesty International dated 9 April 1994.

manifestly unfair trial, Amnesty International has repeatedly called for the review of Xanana Gusmão's conviction by an independent and impartial body. In 1994 the Indonesian authorities refused to allow for a review of his conviction by the Indonesian courts. Amnesty International believes that the government should release Xanana Gusmão if he is not to be given the opportunity of a re-trial by an independent and impartial body.

KEYWORDS: POLITICAL PRISONERS1 / TRIALS1 / INCOMMUNICADO DETENTION / WITNESSES / ICRC / PRISONERS' TESTIMONIES /

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